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CALIFORNIA SPORTFISHING

PROTECTION ALLIANCE

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE, a non-profit
corporation,

Plaintiff,

vs.

PACIFIC BELL TELEPHONE
COMPANY,

Defendant.

Case No. 2:21-cv-00073-MCE-JDP

**[PROPOSED] AMENDED FINAL
CONSENT DECREE**

**(Federal Resource Conservation and
Recovery Act, 42 U.S.C. § 6972(a)(1)(B)
and California Safe Drinking Water and
Toxic Enforcement Act, Cal. Health &
Safety Code § 25249.5)**

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1 **WHEREAS**, Plaintiff California Sportfishing Protection Alliance (“Plaintiff”) filed the above-
2 captioned action (the “Action”) against Defendant Pacific Bell Telephone Company (“Defendant”),
3 alleging violations of the federal Resource Conservation and Recovery Act (“RCRA”) 42 U.S.C. 6901
4 *et seq.*, and the Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), Cal.
5 Health & Safety Code section 25249.5, *et seq.*;

6 **WHEREAS**, Plaintiff contends it is a non-profit public benefit corporation dedicated to the
7 preservation, protection, and defense of the environment, wildlife, and natural resources of
8 California’s waters;

9 **WHEREAS**, Plaintiff contends that Defendant obtained licenses, easements or other approvals
10 from the California State Lands Commission for the purpose of installing and operating submarine
11 telecommunications cables along the bottom of the western side of Lake Tahoe (the “Easements”);

12 **WHEREAS**, two telecommunications cables have been installed in the Lake waters pursuant
13 to the Easements that, when taken together, are approximately 8 miles long (“the Cables”) (A map
14 identifying the approximate current locations of the Cables in the Lake is attached as **Exhibit A**);

15 **WHEREAS**, Plaintiff alleges the Cables violate RCRA and Proposition 65;

16 **WHEREAS**, the State of California has listed Lake Tahoe as a source of drinking water within
17 the meaning of Proposition 65;

18 **WHEREAS**, Plaintiff provided Defendant with a written Notice of Violation of RCRA and
19 Proposition 65 (“Notice Letter”), and Plaintiff further contends that the Notice Letter was provided by
20 certified mail return receipt requested to Defendant’s Chief Executive Officer and agent for service of
21 process; the Administrator of the United States Environmental Protection Agency (“EPA”); the
22 Regional Administrator of EPA Region IX; the California Attorney General; the Acting Director of
23 the California Department of Resources, Recycling and Recovery; and the District Attorneys for the
24 California counties of Placer and El Dorado, all in accordance with 40 C.F.R. section 254.2 and Cal.
25 Health & Safety Code section 25249.7 (A true copy of the Notice Letter is attached as **Exhibit A** to
26 ECF No. 1);

27 **WHEREAS**, Defendant disputes Plaintiff’s allegations set forth in the Notice Letter and in
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1 Plaintiff's original and amended Complaints and contends Plaintiff's claims lack merit;

2 **WHEREAS**, Defendant has obtained permits and other regulatory approvals ("Regulatory
3 Approvals") needed under applicable law to remove the Cables, which are identified in ECF No. 33;

4 **WHEREAS**, in an effort to reduce the cost and expense associated with litigation, the Parties
5 wish to resolve this matter pursuant to the terms of this Consent Decree (the "Final Consent Decree"),
6 which entails the removal of the Cables pursuant to the terms of the Final Consent Decree;

7 **WHEREAS**, the Parties agree that Defendant, in entering into this Final Consent Decree,
8 makes no admission of liability or of any issue of law or fact whatsoever regarding the claims made
9 by Plaintiff in the Action or the Notice Letter;

10 **WHEREAS**, for the purposes of this Final Consent Decree, the Parties agree that: (i) the Court
11 has personal jurisdiction over the Parties and subject matter jurisdiction under 28 U.S.C. sections 1331
12 and 1367, and RCRA (42 U.S.C. § 6972(a)(1)(B)); (ii) venue is proper in this Court under 28 U.S.C.
13 section 1391(b) and RCRA (42 U.S.C. § 6972(a)), because a substantial part of the events or omissions
14 giving rise to Plaintiff's claims occurred in this District. Intra-district venue is proper in Sacramento,
15 California, because the sources of the alleged violations are located in El Dorado and Placer Counties,
16 and Plaintiff contends it has standing under Article III of the U.S. Constitution to bring this Action;

17 **WHEREAS**, the Parties agree that the Court should retain jurisdiction over this matter for
18 purposes of interpreting, modifying, or enforcing the terms of this Final Consent Decree for the life of
19 the Final Consent Decree, or as long thereafter as is necessary for the Court to resolve any motion to
20 enforce this Final Consent Decree;

21 **WHEREAS**, promptly after the mutual execution of this Final Consent Decree (the "Execution
22 Date"), Plaintiff shall file a motion to approve entry of this Final Consent Decree, and shall serve a
23 copy of the motion on the California Attorney General for the 45-day statutory review period specified
24 in Proposition 65 (Health & Safety Code § 25249.7(f)), and California Code of Regulations, title 11,
25 section 3003;

26 **WHEREAS**, the Parties agree to work together to secure prompt judicial approval of the Final
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1 Consent Decree, regardless of any objections from any interested party;

2 **WHEREAS**, consistent with the Regulatory Approvals, the Parties' shared goal is to work in
3 a cooperative fashion to effectuate the removal of the Cables as soon as practicable, and therefore have
4 mutually set a target period to complete removal by November 30, 2024 or the next date in 2025 that
5 is available before May 26, 2025 (Memorial Day), based on weather conditions and consistency with
6 the permitting process ("Target Removal Period");

7 **WHEREAS**, in the event that the Court for any reason denies the motion to approve the Decree
8 in the form submitted with the motion to approve, this Decree shall become null and void; and

9 **WHEREAS**, the date this Final Consent Decree is entered by the Court shall be the "Court
10 Entry Date."

11 **NOW, THEREFORE, IT IS HEREBY STIPULATED BETWEEN THE PARTIES,**
12 **AND ORDERED AND DECREED BY THE COURT AS FOLLOWS:**

13 **1. Defendant Shall Promptly and Diligently Seek To Secure Any Additional**
14 **Authorizations Needed To Remove the Cables.** Starting no later than five (5) business days after
15 the Execution Date, Defendant shall use diligent and commercially reasonable efforts to promptly
16 pursue any permits or other governmental authorizations beyond the existing Regulatory Approvals
17 necessary for lawful removal and off-site transport for disposal or recycling of the Cables (the
18 "Authorizations"). Upon receiving all the Authorizations, Defendant shall notify Plaintiff in writing
19 within five (5) business days.

20 **2. Removal of the Cables.** Consistent with the scope of work set forth in the existing
21 Regulatory Approvals and after the Court Entry Date, Defendant shall remove the Cables from the
22 waters of Lake Tahoe and transport them for lawful off-site disposal or to a cable recycler promptly
23 after receipt of all Authorizations, subject to compliance with all Authorizations and applicable laws,
24 rules and regulations. Defendant has agreed to use diligent and commercially reasonable efforts to
25 remove the Cables by the Target Removal Period. Defendant shall notify Plaintiff in writing within
26 five (5) business days of having completed removal of the Cables from Lake Tahoe.

27 **3. Notice of Inability To Meet Target Removal Period.** If Defendant cannot complete
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1 removal and disposal/recycling of the Cables by the end of the Target Removal Period, in accordance
2 with Paragraph 2, Defendant shall notify Plaintiff in writing within five (5) business days before the
3 end of the Target Removal Period. Defendant agrees to provide Plaintiff with an update on the status
4 of the Authorizations, the efforts Defendant has made to obtain required Authorizations and to
5 complete removal by the end of the Target Removal Period, and Defendant's plan and contemplated
6 timeline to remove the Cables.

7 **4. Dispute Resolution.** If a dispute under this Final Consent Decree arises, or either Party
8 believes in good faith that a breach of this Final Consent Decree has occurred, the Parties shall meet
9 and confer within fourteen (14) days of receiving written notification from the other Party of a request
10 to confer about the matter. If either Party fails to meet and confer in good faith, or the meet-and-confer
11 process is unsuccessful, and after seven (7) days have elapsed from the date the meet-and-confer
12 occurred or should have occurred, then either Party shall be entitled to all rights and remedies under
13 the law, including filing a motion with the Court. Notwithstanding any other provision of this Final
14 Consent Decree, the Court shall retain jurisdiction over the Action for the limited purposes of
15 enforcement of the terms of this Final Consent Decree or for adjusting upon a showing of good cause
16 any deadlines or time limits set forth in this Final Consent Decree.

17 **5. Plaintiff's Release and Waiver.** Upon the Court Entry Date of this Final Consent
18 Decree, Plaintiff, on its own behalf and on behalf of its members, subsidiaries, successors, assigns,
19 directors, officers, agents, attorneys, representatives, and employees, releases and forever discharges
20 Defendant and its officers, directors, employees, shareholders, parents, subsidiaries, and affiliates, and
21 each of their predecessors, successors and assigns, and each of their agents, attorneys, consultants, and
22 other representatives (each a "Released Defendant Party") from any and all claims or causes of action
23 (i) arising from or pertaining to claims asserted in the Action or the Notice Letter, including, without
24 limitation, all claims for injunctive relief, damages, losses, penalties, fines, sanctions, mitigation, or
25 any other sum incurred or claimed or which could have been claimed under RCRA or Proposition 65,
26 for the alleged failure of Defendant to comply with RCRA and/or Proposition 65, up to the Court Entry
27 Date, except for claims for payment of Plaintiff's legal fees and costs in this Action; and (ii) any other
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1 claims (a) relating to the Cables or (b) that could have been brought against Defendant based on the
2 facts alleged in the Second Amended Complaint or otherwise known to Plaintiff.

3 Plaintiff, on behalf of the public interest, hereby waives, releases, and forever discharges all
4 Proposition 65 claims that are the subject of the Notice Letter, effective upon removal of the Cables
5 as required by this Consent Decree.

6 **6. Defendant's Release and Waiver.** Defendant, on its own behalf and on behalf of any
7 Released Defendant Party under its control, releases Plaintiff (and its officers, directors, employees,
8 members, parents, subsidiaries, and affiliates, and each of their successors and assigns, and its agents,
9 attorneys, and other representative) from, and waives all claims which arise from or pertain to the
10 Action, including all claims for fees (including fees of attorneys, experts, and others), costs, expenses,
11 or any other similar sums incurred or claimed or which could have been claimed for matters associated
12 with or related to the Action.

13 **7. The Parties' Waiver of California Civil Code Section 1542.** Each Party
14 acknowledges that it is familiar with California Civil Code section 1542, which provides as follows:

15 A general release does not extend to claims that the creditor or releasing
16 party does not know or suspect to exist in his or her favor at the time of
17 executing the release, which if known by him or her must have
18 materially affected his or her settlement with the debtor or released
19 party.

20 Each Party waives and relinquishes any right or benefit it has or may have under California
21 Civil Code section 1542 or any similar provision under statutory or non-statutory law. The Parties
22 acknowledge that each may subsequently discover facts in addition to, or different from, those that it
23 believes to be true with respect to the claims released herein. The Parties agree that this Decree and
24 the releases contained herein shall be and remain effective in all respects notwithstanding the discovery
25 of such additional or different facts.

26 **8. Plaintiff's Fees & Costs.** The amount of any award of legal fees and costs to Plaintiff
27 in this Action shall be determined by the Court. Plaintiff shall file any motion seeking any legal fees
28 and costs by October 31, 2024, and shall notice any such motion for a hearing date that is 45 days after

1 the filing date.

2 **9. No Admission of Liability.** The Parties enter into this Final Consent Decree for the
3 purpose of avoiding prolonged and costly litigation of the claims in the Action. Nothing in this Final
4 Consent Decree shall be construed as, and Defendant expressly does not intend to imply, an admission
5 as to any fact, finding, issue of law, or violation of law, nor shall compliance with this Final Consent
6 Decree constitute or be construed as an admission by Defendant of any fact, finding, conclusion, issue
7 of law, or violation of law. However, this paragraph shall not diminish or otherwise affect the
8 obligation, responsibilities, and duties of the Parties under this Final Consent Decree.

9 **10. Execution.** This Final Consent Decree may be executed in one or more counterparts
10 which, taken together, shall be deemed to constitute one and the same document. An executed copy
11 of this Final Consent Decree shall be valid as an original.

12 **11. Cooperation.** Both Parties shall support entry of this Final Consent Decree and shall
13 waive any right to appeal it if entered. If the Court approves and enters this Final Consent Decree, but
14 such Final Consent Decree is reversed and vacated by an appellate court, or if the Court does not
15 approve and enter this Final Consent Decree within ninety (90) days of the Parties having submitted
16 it to the Court for approval and entry, the Parties shall meet and confer as to whether to modify the
17 terms of this Final Consent Decree. If the Parties do not jointly agree on a course of action to take,
18 the Action shall proceed on its normal course on the Court's calendar.

19 **12. Choice of Law.** The terms of this Final Consent Decree shall be interpreted pursuant
20 to the laws of California.

21 **13. Authority.** The undersigned are authorized to execute this Final Consent Decree on
22 behalf of their respective Parties and have read, understood and agreed to be bound by all of the terms
23 and conditions of this Final Consent Decree.

24 **14. Integration and Non-Assignment.** This Final Consent Decree contains all of the
25 terms and conditions agreed upon by the Parties relating to the matters covered by the Final Consent
26 Decree, and supersedes any and all prior and contemporaneous agreements, negotiations,
27 correspondence, understandings, and communications of the Parties, whether oral or written,
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1 respecting the matters covered by this Final Consent Decree. This Final Consent Decree is made for
2 the sole benefit of the Parties, and no other person or entity shall have any rights or remedies under or
3 by reason of this Final Consent Decree, unless otherwise expressly provided for therein.

4 **15. Notices.** Any notices or documents required or provided for by this Final Consent
5 Decree or related thereto that are to be provided to Plaintiff shall be sent by electronic mail
6 transmission to the email addresses listed below:

7 Chris Shutes, Executive Director, CSPA - E-mail: blancapaloma@msn.com

8 With copies sent to:

9 Matthew C. Maclear - E-mail: mcm@atalawgroup.com

10 Erica A. Maharg - E-mail: eam@atalawgroup.com

11 Any notices or documents required or provided for by this Final Consent Decree or related
12 thereto that are to be provided to Defendant shall be sent by electronic mail transmission to the email
13 addresses listed below:

14 Sarah Teachout (sarah.teachout@att.com)
15 Senior Vice President and Assistant General Counsel
16 AT&T Services, Inc.
208 S. Akard Street
Dallas, Texas 75202

17 With copies sent to:

18 Navi Dhillon (navidhillon@paulhastings.com)
19 Deborah Schmall (deborahschmall@paulhastings.com)
20 Paul Hastings LLP
101 California Street, 48th floor
San Francisco, CA 94111

21 Hariklia Karis (hariklia.karis@kirkland.com)
22 Mark Nomellini (mark.nomellini@kirkland.com)
23 Kirkland & Ellis LLP
333 West Wolf Point Plaza
Chicago, IL 60654

24 Each Party shall promptly notify the other of any change in the above-listed contact
25 information. Signatures of the Parties transmitted by facsimile or email shall be deemed binding.

26 **16. Mutually Drafted.** This Final Consent Decree shall be deemed to have been drafted
27 equally by the Parties, and shall not be interpreted for or against any Party on the ground that any such
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Party drafted it.

17. Amendments. This Final Consent Decree may be amended or modified only by a writing signed by the Parties or their authorized representatives with a courtesy copy to the California Attorney General.

18. Dismissal. Concurrent with the entry of this Final Consent Decree, the Parties agree that this Action shall be deemed dismissed with prejudice by the Court. Notwithstanding the dismissal of this Action, the Parties agree that the Court retains jurisdiction to resolve any disputes or enforce any terms of this Final Consent Decree.

Dated: October 22, 2024

CALIFORNIA SPORTFISHING PROTECTION
ALLIANCE

By:

Signed by:

Chris Shutes

AB532C49C16D4FC...

Signature

Chris Shutes, Executive Director

Dated: October 23, 2024

PACIFIC BELL TELEPHONE COMPANY

By:

Sarah Teachout

Signature

Sarah Teachout, Senior Vice President and Assistant
General Counsel

Good cause appearing,

IT IS SO ORDERED AND THIS ACTION IS HEREBY DISMISSED WITH PREJUDICE.

Dated: _____, 2024

By:

United States District Court
Eastern District of California

Exhibits:
A-Map of Cables